

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4147 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

IKBAL KARIM SIPAHI @ KISHOR KANJI DABHI @ RAFIK DAUD

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner
MR RM CHAUHAN,AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 24/07/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 12-1-98 passed by the Police Commissioner, Rajkot City, under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention.

In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on four criminal cases registered against the petitioner for the offences under sections 454, 457, 380, 114 IPC three out of which are pending trial and one is under police investigation. Over and above these criminal cases, the detaining authority has also placed reliance on the statements of three witnesses of the incidents of 3-12-97, 5-12-97 and 8-11-97 . In the first incident the witness demanded rickshaw charges from the detenu and on second occasion the witness refused to pay Rs.700/- demanded by the petitioner and on the last occasion the petitioner did not pay the amount for the PAN consumed by him and not only that but also illegally took away Rs. 300 from the cash-counter of the Galla. On all these occasions , people gathered to see the incidents and they started running helter-skelter when the petitioner rushed towards them with open knife with the result an atmosphere of fear and terror was created.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a dangerous person within the meaning of Section 2(c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by way of this petition.

This petition is required to be allowed on the ground that assuming for the sake of arguments that the allegations made against the petitioner are true , the same at best can be treated as breaches of law and order and not public order. I have gone through the statements of the witnesses which are stereo-type . Reading the same, it clearly establishes without any manner of doubt that the statements are quite general and vague in nature and the alleged incidents are against individuals and the general public is not concerned at all and, therefore, it cannot be contended that the petitioner is involved in committing breaches of public order. Even if the allegations made are believed to be true, the same at best can be termed as breach of law and order and in no circumstances the same can be termed as breach of public order. Consequently, therefore, the satisfaction arrived at by the detaining authority that the petitioner is a dangerous person is also visited . The order of detention is therefore liable to be quashed and set aside.

In the result, this petition is allowed. The In

the result, this petition is allowed. The order of detention dated 12-1-98 is quashed and set aside. The detenu Iqbal Karimbhai Shipahi @ Kishor Kanjibhai Dabhi Rafiq Daudbhai is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs. Writ be sent to Surat District Jail .

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